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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,357	12/01/2003	Leslie W. Organ	25-358	8048
23117	7590	08/01/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			HOEKSTRA, JEFFREY GERBEN	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/724,357	Applicant(s) ORGAN ET AL.	
	Examiner Jeffrey G. Hoekstra	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-24 and 26-94 is/are pending in the application.
- 4a) Of the above claim(s) 29-94 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-24 and 26-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice of Amendment

1. In response to the amendment filed on 05/10/2006, amended claims 1-7, 9-24, and 28 and canceled claims 8 and 25 are acknowledged. The current rejections of the claims 1-7, 9-24, and 28 are *withdrawn*. The following new and reiterated grounds of rejection are set forth:

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claims 1-7, 9-24, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faupel et al (US 5,660,177) in view of Church et al (US 6,501,984 B1).
5. For claim 1, Faupel et al discloses an electrode array comprising a body 194, a plurality of flexible arms 192 extending from said body, and a plurality of outer electrodes 106 that obtain impedance measurements wherein one is spaced distally further from said body than the remainder as best seen in Figure 12.
6. For claims 2-4, Faupel et al shows in Figures 11 and 12 adjacent flexible arms containing outer electrode pairs with varying degrees of extension from the body (column 18 lines 17-31).
7. For claims 5-8, Faupel et al shows in Figures 11 and 12 adjacent flexible arms containing inner electrode pairs with varying degrees of extension from the body (column 18 lines 17-31).
8. For claims 9-16, Faupel et al shows in Figure 12 first, second, third, and fourth outer sets of electrodes spaced distally increasing degrees of distance from said body wherein the arms are adjacent.
9. For claims 17-22, Faupel et al discloses distributing inner electrodes on the same arm as first, second, third, and fourth outer sets of electrodes but not adjacent thereto (column 5 line 66 – column 6 line 2).
10. For claims 23-25, Faupel et al shows in Figures 11 and 12 disposing inner and outer electrodes in pairs equally spaced from said body (column 5 line 66 – column 6 line 2).

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11. For claims 26-28, Faupel et al shows in Figure 12 spacing twelve flexible arms of differing length around a body providing the desired electrode spacing configuration (column 18 line 66 – column 19 line 2).

12. Faupel et al discloses the claimed invention as broadly as structurally claimed except for explicitly disclosing disposing an electrode array comprising a plurality of inner and outer electrode pairs comprising at least two electrodes in each pair one of said electrodes for applying a stimulating current and the other of said electrodes for measuring a voltage. Church et al discloses an impedance based disease diagnosing apparatus, comprising: disposing an electrode array 22 comprising a plurality of inner and outer electrode pairs comprising at least two electrodes in each pair one of said electrodes for applying a stimulating current and the other of said electrodes for measuring a voltage (column 2 line 42 – column 4 line 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the impedance measuring apparatus as taught by Faupel et al, with the electrode pair configuration as taught by Church et al for the purpose of increasing the efficacy of diagnosing diseased tissue via impedance based measurements.

Response to Arguments

13. Applicant's arguments with respect to claims 1-7, 9-24, and 26-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

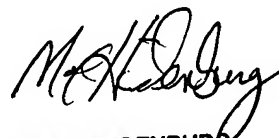
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey G. Hoekstra whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday, 8:00 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGH



MAX F. HINDENBURG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700